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**IN THE  
COURT OF APPEALS OF INDIANA**

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DONALD EDWARD BAKER,

Appellant-Defendant,

vs.

STATE OF INDIANA,

Appellee-Plaintiff.

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No. 48A04-0801-CR-14

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APPEAL FROM THE MADISON CIRCUIT COURT  
The Honorable Fredrick R. Spencer, Judge  
Cause No. 48C01-0706-FA-272

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**April 16, 2008**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**BAILEY, Judge**

## **Case Summary**

Appellant-Defendant Donald Edward Baker (“Baker”) appeals his sentence for Child Molestering, as a Class A felony. We affirm.

## **Issue**

Baker raises the sole issue of whether his sentence is inappropriate.

## **Facts and Procedural History<sup>1</sup>**

On June 5, 2007, Baker was charged with child molestering, as a Class A felony. On August 31, 2007, Baker pled guilty to the charge. There was no plea agreement. At the hearing, the following factual basis was provided:

[O]n or about June 4<sup>th</sup> of 2007, in Madison County, State of Indiana, this defendant, Donald Edward Baker, a/k/a Donald Edward Ipock, the person that was at least twenty-one (21) years of age . . . did perform sexual intercourse with [S.I.] [Baker’s daughter], a child under the age of fourteen (14) years, to wit: eleven (11) years of age.

Trial transcript at 11.

At the sentencing hearing, S.I. testified that she had been molested by her uncle months prior to the incident with Baker. Baker attended the criminal proceedings against the uncle. Janet Ipock, S.I.’s mother and Baker’s wife at the time of the crime, testified that Baker knew that S.I. had been molested by her uncle.

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<sup>1</sup> A copy of the pre-sentence investigation report on white paper is included within the appellant’s appendix. We remind the parties that Ind. Appellate Rule 9(J) requires that “[d]ocuments and information excluded from public access pursuant to Administrative Rule 9(G)(1) shall be filed in accordance with Trial Rule 5(G).” Ind. Administrative Rule (G)(1)(b)(viii) requires that “[a]ll pre-sentence reports pursuant to Ind.Code § 35-38-1-13” are “excluded from public access” and “confidential.” The inclusion of the report on white paper in the appellant’s appendix is contrary to Trial Rule 5(G) that states in pertinent part: “Every document filed in a case shall separately identify information excluded from public access pursuant to Admin. R. 9(G)(1) as follows: (1) Whole documents that are excluded from public access pursuant to Administrative Rule 9(G)(1)

In sentencing Baker, the trial court stated:

[H]e has a prior history of felony conviction and then he violated his probation in something. . . . I will not call his criminal history significant. He does have some criminal history and he does have a prior felony and that's worth something. Clearly, clearly the significant aggravators are that he's done this horrible, horrible violation of trust to his own biological child. . . . [I]t seems to me if her own dad knows that she's been violated by someone else and then he does it, it seems to me that is an aggravating circumstance. . . . The mitigators are that he did plead guilty and he cooperated fully and made a very full confession, although it is really diminished by the fact that in his . . . in his confession, damaging admissions, statement, whatever you want to call it he blames the little girl. . . . And in court he did express some remorse and apologize, so I have to mention that. You did do that. . . . I have some hesitancy in imposing the maximum sentence, but I really don't think the mitigators amount to that much . . . . And his criminal history, although it he does have criminal history, it's not long . . . a long . . . it doesn't show a pattern of anti-social behavior. . . . I clearly believe that the aggravators vastly outweigh the mitigating circumstances.

Tr. 26-28. The trial court sentenced Baker to forty-five years.

Baker now appeals.

### **Discussion and Decision**

Baker contends that the sentence imposed by the trial court is inappropriate under Indiana Appellate Rule 7(B). Our Supreme Court recently reviewed the standard by which appellate courts independently review criminal sentences:

Although a trial court may have acted within its lawful discretion in determining a sentence, Article VII, Sections 4 and 6 of the Indiana Constitution authorize independent appellate review and revision of a sentence through Indiana Appellate Rule 7(B), which provides that a court may revise a sentence authorized by statute if, after due consideration of the trial court's decision, the Court finds that the sentence is inappropriate in light of the nature of the offense and the character of the offender. The burden is on the defendant to persuade us that his sentence is inappropriate.

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shall be tendered on light green paper or have a light green coversheet attached to the document, marked 'Not for Public Access' or 'Confidential.'"

Reid v. State, 876 N.E.2d 1114, 1116 (Ind. 2007) (internal quotation and citations omitted).

Baker's challenged sentence is for a Class A felony. The range of possible sentences for a Class A felony is between a minimum of twenty years and a maximum of fifty years with an advisory sentence of thirty years. The trial court sentenced Baker to forty-five years.

As for the nature of the offense, Baker had intercourse with his eleven-year-old daughter months after her uncle had molested her. Baker had knowledge of the prior molestation as he had attended the criminal trial at which his daughter testified to the events.

The circumstances of this crime involve the violation of the position of trust. "Abusing a position of trust is, by itself, a valid aggravator which supports the maximum enhancement of a sentence for child molesting." Singer v. State, 674 N.E.2d 11, 14 (Ind. Ct. App. 1996). "There is no greater position of trust than that of a parent to his own young child." Hart v. State, 829 N.E.2d 541, 544 (Ind. Ct. App. 2005). Moreover, Baker committed this crime when his daughter was vulnerable due to being recently molested by another family member.

As for the character of the offender, Baker has a criminal history that consists of an infraction for driving a vehicle without financial responsibility, a misdemeanor conviction of theft, two convictions for nonsupport of a dependent, a Class D felony, and a violation of probation. Baker was cooperative with police in their investigation and did plead guilty without a plea agreement. However, in his admissions to the police Baker accused S.I. of initiating the sexual conduct. S.I.'s statement to police indicated that Baker was the instigator.

Based on the nature of the offense and the character of the offender, we are not

persuaded that Baker's enhanced sentence of forty-five years is inappropriate.

Affirmed.

FRIEDLANDER, J., and KIRSCH, J., concur.